

REMARKS

Claims 1, 2, 4-8 and 13-15 were pending. All claims are rejected.

Claim 20 is new.

Claims 1, 2, 4-8, 13-15 and 20 are now pending.

Support for New Claim 20

New claim 20 is supported by the disclosure on page 9, last paragraph (0.01 to 5 % of formula (1)) and Example 6, formulations 12a through 12l wherein compound of formula 102 is 0.9 wt. %.

No new matter is added.

35 USC 103(a)

Claims 1, 2, 4-7, 9-10 and 14-15 are rejected under 35 USC 103(a) as being unpatentable over Ghosh, US 2004/0261196 in view of Model, US 3,903,007.

Examiner is of the opinion that Ghosh, '196 teach the method of cleaning the fabric articles, wherein the conventional cleaning is carried out with a large amount of water at the consumer's home or other place [0004].

Ghosh does not teach a method of cleaning and the ratio of the textile fiber materials to water in a washing machine. Model teaches detergent compositions comprising hydroxyl-diphenyl ether and method of using, wherein the ratio of fabric to water is 1:20. Examiner believes it would have been obvious to one of ordinary skill in the art to use the method of cleaning and the ratio of Model in the teachings of Ghosh.

Applicants have previously submitted a 132 declaration directed to a showing of unexpected benefits obtained from the combination of the compound of formula (1) and either of formulae (4) or (5).

Declaration under 1.132

Cotton fabric is washed with a US Standard Liquid Detergent containing 0.6 % TINOSAN® HP 100 (formula 5) show excellent bactericidal activity. Log reductions of > 5 and 4.2 relative to the Placebo Liquid Detergent are observed against the test strain Eschericia coli ATCC 10536.

Cotton fabric washed with a US Standard Liquid Detergent containing 0.2% TINOSAN® Plus FG or 0.1% TINOSAN® Plus FG (formula 1) show excellent fungicidal activity. Log reductions of 1.4 and

1.1 (relative to the Placebo Liquid Detergent) against the test strain *Chaetomium globosum* ATCC 6205 have been shown.

The combination of 0.1% TINOSAN® Plus FC and 0.3% TINOSAN® HP 100 in a liquid detergent results in an “activity benefit” against both bacteria and fungi.

These results clearly indicate the simultaneously high activity against bacteria and fungi of a combination of 0.1% TINOSAN® Plus FC and 0.3% TINOSAN® V HP 100 in a liquid detergent even at lower concentrations as compared to their individual use.

These results are important because the instantly claimed method allows formulating a detergent for use in a domestic washing process which not only cleans the textile fiber material but also prevents or reduces bacteria and fungi adverse effects.

Examiner was not persuaded by the previously submitted Declaration. Examiner states that “the evidence in the Declaration can only prove that the instant claimed invention has benefit of preventing and reducing the growth of bacteria. The evidence does not illustrate facts showing the difference between the claimed invention and the instant reference. Because Ghosh and Model disclose the same cleaning method and compositions of the claimed invention, they implicitly have the same effectiveness as that alleged by the applicant.

Applicants strongly disagree with this analysis. This is an obviousness rejection and one which calls for the combination of both Ghosh and Model.

Ghosh provides the reader with a rather long list of possible antimicrobial agents suitable for fabric care in paragraph [102]. 2-(4"-thiazolyl)benzimidazole and Triclosan may be chosen from this list. However, there is little direction from Ghosh to select precisely these two from a list of many.

One skilled in the art would need to select these two alternatives together and use in a domestic washing process along with a detergent.

While one skilled in the art might select both antimicrobial, it is clear that neither reference (Ghosh or Model) understood that in doing so certain advantages are achieved. The unobvious advantage is:

Simultaneously high activity against bacteria and fungi and that this high activity is accomplished in a liquid detergent at lower concentrations as compared to their individual use.

This combination shows a kind of synergism in that less of each antimicrobial active may be used when combined at lower levels to achieve acceptable antifungal and antimicrobial effects.

For example, in the bacterial testing (table at the top of page 4 of the Declaration) 0.2% of TINOSAN Plus FG is very effective at reducing bacterial growth after 24 hours and that high concentrations of (0.6%) TINOSAN HP 100 is less so. When TINOSAN Plus FG is reduced to half the wt. % and combined with 0.3% TINOSAN HP 100 and acceptable bacterial reduction of 4.3 is achieved.

During the fungi test (second table on page 4) it is clear that 0.6% TINOSAN HP 100 by itself is highly effective at reducing fungi growth. However, when the TINOSAN HP 100 is reduced by half (0.3%) but combined with TINOSAN Plus FC, a high degree of antifungal properties is still observed.

Thus the combination of TINOSAN HP 100 with TINOSAN Plus FC allows formulating a detergent for use in a domestic washing process which not only cleans the textile fiber material but also prevents or reduces infection of the material with fungi and bacteria. And further the combination succeeds in doing this at lower overall concentrations of both actives.

Applicants respectfully submit that the examiner has not really considered the Declaration and all it implies. Although, Ghosh for example teaches the use of both actives in a conventional washing process, these actives would have to have been selected from a relatively long list of actives to arrive at the present claim limitations. And even if it were obvious to make this selection (applicants submit it is not), neither Ghosh nor Model were aware of the advantage of the selection. That is neither Ghosh nor Model could have been aware of resulting **fungi and bacterial protection and that this protection can be achieved at lower overall concentration levels than when the actives are used alone.**

Claim 8 and 13 are rejected under 35 USC 103(a) as being unpatentable over Ghosh, US 2004/0261196 and Model, US 3,903,007 as applied to claim 1 above in view of Majeti US 2003/0212232.

Examiner has applied Ghosh and Model as above but supplied Majeti to teach a composition for treating textiles and hard surfaces, wherein the composition comprises an enzyme.

However, the applicants submit that the declaration presently enclosed overcomes this rejection as the results shown comprising both the antimicrobial of formulae 4 or 5 and the antifungal compound of formula 1 show unexpected efficacy. Not only does the combination provide antifungal and antibacterial efficacy but also is able to provide antifungal and antibacterial efficacy at lower dosages than would be expected.

Declaration and Scope of the Claims

Applicants have added an additional new claim 20. This new claim is added to address the Examiner's concern that the Declaration is not commensurate with the scope of the claim. The test in the Declaration is now directed to amounts of component a) and component k) of formula (5) (TINOSAN HP100) which reflect the amounts and specific compositions tested in the previously submitted Declaration. Applicants submit that the new claim is now commensurate with the scope of the Testing carried out in the Declaration and the application examples.

Reconsideration and withdrawal of the rejection of claims 1, 2, 4-10, 13-15 and 20 is respectfully solicited in light of the remarks *supra* and previously enclosed Declaration. The applicants respectfully request reconsideration of the Declaration in particular even though after Final.

Since there are no other grounds of objection or rejection, passage of this application to issue with claims 1, 2, 4-8 and 13-15 is earnestly solicited.

Applicants submit that the present application is in condition for allowance. In the event that minor amendments will further prosecution, Applicants request that the examiner contact the undersigned representative.

Respectfully submitted,
/Shiela A. Loggins/

BASF Performance Products LLC.
540 White Plains Road
Tarrytown, New York 10591
(914) 785-2768
SAL/23033RCE.doc

Shiela A. Loggins
Agent for Applicants
Reg. No. 56,221